

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SANTIAGO MONTENEGRO,

No. C 07-3906 WHA (PR)

Petitioner,

ORDER TO SHOW CAUSE

v.

BEN CURRY, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility in Soledad, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

The petition attacks denial of parole, so venue is proper in this district, which is where petitioner is confined. *See* 28 U.S.C. § 2241(d) (venue proper in both district of conviction and district of confinement).

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975).

1 A district court shall "award the writ or issue an order directing the respondent to show
2 cause why the writ should not be granted, unless it appears from the application that the
3 applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. Summary dismissal is
4 appropriate only where the allegations in the petition are vague or conclusory, palpably
5 incredible, or patently frivolous or false. *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir.
6 1990) (quoting *Blackledge v. Allison*, 431 U.S. 63, 75-76 (1977)).

7 *B. Legal Claims*

8 Petitioner was convicted of second degree murder in 1992. He received a sentence of
9 seventeen years to life in prison. He alleges that he has exhausted these parole claims by way of
10 state habeas petitions.

11 As grounds for federal habeas relief, petitioner asserts that the denial of parole was not
12 supported by the evidence. These claims are sufficient to require a response. *See Biggs v.*
13 *Terhune*, 334 F.3d 910, 916-17 (9th Cir. 2003) (warning that repeated denial of parole based on
14 unchanging characteristics of offense might violate due process); *McQuillion v. Duncan*, 306
15 F.3d 895, 904 (9th Cir. 2002) (due process requires that at least "some evidence" support parole
16 denial).

17 **CONCLUSION**

18 1. The clerk shall mail a copy of this order and the petition with all attachments to the
19 respondent and the respondent's attorney, the Attorney General of the State of California. The
20 clerk shall also serve a copy of this order on the petitioner.

21 2. Respondent shall file with the court and serve on petitioner, within sixty days of the
22 issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
23 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
24 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state
25 trial record that have been transcribed previously and that are relevant to a determination of the
26 issues presented by the petition.


27 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
28 court and serving it on respondent within thirty days of his receipt of the answer.

1 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer,
2 as set forth in Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a
3 motion, petitioner shall file with the court and serve on respondent an opposition or statement of
4 non-opposition within thirty days of receipt of the motion, and respondent shall file with the
5 court and serve on petitioner a reply within 15 days of receipt of any opposition.

6 4. Petitioner is reminded that all communications with the court must be served on
7 respondent by mailing a copy of the document to respondent's counsel. Papers intended to be
8 filed in this case should be addressed to the clerk rather than to the undersigned. Petitioner also
9 must keep the court informed of any change of address by filing a separate paper with the clerk
10 headed "Notice of Change of Address," and comply with any orders of the court within the time
11 allowed, or ask for an extension of that time. Failure to do so may result in the dismissal of this
12 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez*
13 *v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

14 **IT IS SO ORDERED.**

15
16 Dated: August 3 , 2007.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE